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No. 10-648

In the Supreme Court of the United States

FOUNDATION OF HUMAN UNDERSTANDING,
PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the court of appeals correctly upheld the determination of the Internal Revenue Service that petitioner, an entity exempt from tax as a publicly supported religious organization, was not a "church" within the meaning of 26 U.S.C. 170(b)(1)(A)(i) during its 1998, 1999, and 2000 tax years.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 74a-86a) is reported at 614 F.3d 1383. The opinion of the Court of Federal Claims (Pet. App. 2a-73a) is reported at 88 Fed. Cl. 203.

JURISDICTION

The judgment of the court of appeals was entered on August 16, 2010. The petition for a writ of certiorari was filed on November 12, 2010. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. This case presents the question whether petitioner, an organization that the parties agree qualifies as a publicly supported tax-exempt religious organization under 26 U.S.C. 501(a) and (c)(3), also qualified as a

"church" under 26 U.S.C. 170(b)(1)(A)(i) during its 1998, 1999, and 2000 tax years. An entity that qualifies as a church under Section 170(b)(1)(A)(i) is exempt from the requirement, imposed on other charities, of filing Form 990 information returns under 26 U.S.C. 6033, and it is not required to maintain a minimum level of public financial support in order to avoid being classified as a private foundation. In addition, under 26 U.S.C. 7611, the Internal Revenue Service (IRS) must take certain preliminary steps before commencing an audit of an organization claiming to be a church.

2. Petitioner is a California nonprofit corporation. Pet. App. 4a. Petitioner was first incorporated in 1963 by Roy Masters and his wife for the stated purpose of "the promulgation of the religious, charitable, scientific, literary and educational aspects of mind over matter and spiritual health known as psychocatalysis." *Id.* at 5a. In furtherance of that mission, petitioner has engaged in such activities as broadcasting its teachings, publishing books and pamphlets, and conducting in-person seminars and services. See *Foundation of Human Understanding* v. *Commissioner*, 88 T.C. 1341, 1345-1347 (1987) (*Foundation I*).

Since 1965, the IRS has recognized petitioner as a tax-exempt religious organization under 26 U.S.C. 501(c)(3). Pet. App. 75a. In 1970, petitioner filed Form 4653, entitled "Notification Concerning Foundation Status," asserting that it was not a private foundation because it qualified as a church under 26 U.S.C. 170(b)(1)(A)(i).[1] The IRS agreed that petitioner was not

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[1] Organizations described in 26 U.S.C. 501(c)(3) are either private foundations or public charities. Private foundations are subject to certain excise taxes, and they must abide by stringent record-keeping and reporting requirements to ensure that they use their funds for chari-

a private foundation, but it classified petitioner as a publicly supported charitable organization rather than as a church. Pet. App. 5a-6a, 75a.

Petitioner subsequently renewed its request for church status. The IRS denied that request in 1983. Pet. App. 75a. Petitioner then filed suit in the United States Tax Court seeking a declaratory judgment that it qualified as a church. *Ibid.*

3. The Tax Court held that petitioner qualified as a church under Section 170(b)(1)(A)(i) for periods before 1983. *Foundation I*, 88 T.C. at 1361. The court began its analysis by noting that neither the statute nor the applicable regulations define the term "church" as used in 26 U.S.C. 170. *Foundation I*, 88 T.C. at 1356. The court observed, however, that it "seems clear" that "Congress intended that the word 'church' have a more restrictive definition than the term 'religious organization.'" *Ibid.* The court then identified two analytical approaches for distinguishing churches from other religious organizations recognized under Section 501(c)(3). *Id.* at 1357-1358.

First, the Tax Court identified the so-called "associational" test. *Foundation I*, 88 T.C. at 1357. The court reasoned that what distinguishes a church from other religious organizations is "the means by which its reli-

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table purposes. See 26 U.S.C. 4941-4948; *Church of Visible Intelligence that Governs the Universe* v. *United States*, 4 Cl. Ct. 55, 64 (1983) (*Visible Intelligence*). By contrast, public charities, such as churches, are relieved from the excise taxes and record-keeping and reporting requirements that apply to private foundations. See *ibid.*; 26 U.S.C. 509(a). Moreover, donors to public charities enjoy the greatest level of deductibility for their donations. See 26 U.S.C. 170(b)(1)(A) and (B) (allowing deductions up to 50% of the donor's wage base for the taxable year for certain organizations, and limiting deductions of gifts to certain other organizations to 30% of the donor's wage base).

gious purposes are accomplished." *Ibid.* "At a minimum," the court explained, a church is "a body of believers or communicants that assembles regularly in order to worship." *Ibid.* (quoting *American Guidance Found., Inc.* v. *United States*, 490 F. Supp. 304, 306 (D.D.C. 1980) (*American Guidance*)). Thus, the court explained, a religious organization does not qualify for church status if "bringing people together for worship is only an incidental part of [its] activities." *Ibid.*

Second, the Tax Court identified a set of 14 criteria that had been adopted by the IRS to assist in its church-status determinations. *Foundation I*, 88 T.C. at 1357-1358. These criteria are as follows:

> (1) a distinct legal existence; (2) a recognized creed and form of worship; (3) a definite and distinct ecclesiastical government; (4) a formal code of doctrine and discipline; (5) a distinct religious history; (6) a membership not associated with any other church or denomination; (7) an organization of ordained ministers; (8) ordained ministers selected after completing prescribed courses of studies; (9) a literature of its own; (10) established places of worship; (11) regular congregations; (12) regular religious services; (13) Sunday schools for religious instruction of the young; and (14) schools for the preparation of its ministers.

Id. at 1358.[2] The Tax Court noted that "these criteria are not exclusive and not mechanically applied," and that the IRS also considers "any other facts and circumstances which may bear upon the organization's claim

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[2] In 1987, then-Commissioner of Internal Revenue Jerome Kurtz publicized these criteria, which had long been used by the IRS. See *Foundation I*, 88 T.C. at 1357 & n.6.

for church status." *Id.* at 1350, 1358. The court further explained that "[n]one of the criteria is considered controlling," but that a leading precedent had described some of the criteria, including "regular congregations" and "regular religious services," as having "central importance." *Ibid.* (quoting *American Guidance*, 490 F. Supp. at 306). The Tax Court described the criteria as "helpful" but did "not adopt them as a test." *Ibid.*

Characterizing the question before it as a "close" one, the Tax Court concluded that petitioner was a "church" for tax purposes based on its activities at that time. *Foundation I*, 88 T.C. at 1361. The court primarily based its conclusion on the following facts: (1) petitioner owned a building in Los Angeles, California, where it conducted services three or four times a week; (2) petitioner operated Brighton Academy, a school for children that provided instruction based on petitioner's religious teachings; (3) petitioner had purchased Tall Timbers Ranch in Selma, Oregon, where it conducted seminars, meetings, and other activities; (4) petitioner had purchased a church building in Grants Pass, Oregon, where it conducted services; and (5) petitioner provided "regular religious services for established congregations [consisting of 50 to 350 persons] that [were] served by an organized ministry." *Id.* at 1347-1349, 1359; see Pet. App. 75a-76a. Based on those facts, the court found that petitioner satisfied most of the criteria "considered to be of central importance" and "possesse[d] associational aspects that [were] much more than incidental." *Foundation I*, 88 T.C. at 1360. The court noted that petitioner devoted substantial resources to its publishing and broadcasting activities, and that it reached far more people through those activities than through its in-person services. *Ibid.* The

court concluded, however, that those activities did not "overshadow the other indications that the petitioner is a church." *Ibid.*

In accordance with the Tax Court's decision, the IRS issued a revised determination letter confirming petitioner's status as a church, effective August 1, 1979. Pet. App. 6a-7a. From that date through 1997, petitioner was treated as a church for tax purposes, and its status for those years is not in dispute.

4. Following the Tax Court's decision, petitioner underwent several significant changes. In 1991, Brighton Academy was separately incorporated and no longer offered instruction based on petitioner's religious teachings. Pet. App. 76a. In the mid-1990s, petitioner sold its facilities in Los Angeles and Grants Pass and discontinued its practice of holding regular services for established congregations. *Id.* at 76a, 83a. In the late 1990s, petitioner's meetings at Tall Timber Ranch became less frequent. *Id.* at 76a. Petitioner continued, however, to broadcast and publish its messages and began using the internet for this purpose. *Ibid.*

In 2001, the IRS conducted an examination to determine whether petitioner continued to qualify for church status for the period from January 1, 1998, through December 31, 2000. Pet. App. 76a-77a. Based on petitioner's changed circumstances, the IRS determined that, although petitioner retained its tax-exempt status as a publicly supported religious organization, it had ceased to qualify as a church as of January 1, 1998. *Id.* at 7a. In response to the IRS's determination, petitioner filed the instant suit in the Court of Federal Claims (CFC), seeking a declaration that it continued to qualify as a church. *Ibid.*

5. The CFC entered judgment for the government. Pet. App. 2a-73a. The court restricted the scope of the evidence to petitioner's activities during the three years for which it was audited. *Id.* at 23a-25a. Like the Tax Court in *Foundation I*, the court then applied both the IRS's 14 criteria and the so-called "associational" test. *Id.* at 34a-40a. With respect to the IRS's 14 criteria, the court recognized that a "mechanical application" of those criteria might raise First Amendment concerns in light of the country's "diverse set of religious organizations." *Id.* at 38a; see *id.* at 30a-31a. The CFC noted, however, that courts had simply used those criteria as a helpful guide, rather than as a definitive test. *Id.* at 34a-36a. The CFC further emphasized that petitioner "[was] not required to meet each criterion in order to obtain classification as a church for federal tax purposes," and that the court would consider any other relevant facts and circumstances. *Id.* at 36a.

The CFC found that petitioner satisfied some, but not all, of the 14 criteria. Specifically, it recognized that petitioner had an independent legal existence, a recognized creed, a distinct religious history, a literature of its own, a place of worship at Tall Timber Ranch, an ecclesiastical government, a formal doctrine, and an organization of ministers trained by Roy Masters. Pet. App. 45a-53a. The court concluded, however, that petitioner did not have a membership not associated with any other church or denomination, lacked schools for its ministers, and did not provide religious instruction for the young because Brighton Academy no longer taught petitioner's principles. *Id.* at 45a, 52a-55a.

The CFC also found that petitioner lacked a regular congregation during the years at issue. Pet. App. 55a-63a. The court observed that petitioner had sold its fa-

cilities in Los Angeles and Grants Pass where the 50 to 350 congregants referred to in *Foundation I* had once gathered. *Id.* at 55a-56a. The court also explained that petitioner had offered no evidence that those congregants, or any other established group of people, had continued to practice together during the years at issue. *Id.* at 56a. The CFC noted that petitioner had submitted a large volume of letters, e-mails, and declarations from prisoners and other individuals who had received petitioner's teachings and considered petitioner to be their church. The court found, however, that those documents did not establish the existence of a "group of followers that regularly congregates in any form—whether virtually or in one another's physical presence." *Id.* at 62a.

The CFC similarly concluded that petitioner had not conducted regular religious services during the years at issue. Pet. App. 64a-67a. To begin with, the court found that petitioner had not held in-person services on a regular basis. For example, petitioner had documented only 21 seminars from 1998 to 2000, five of which were held at Tall Timbers Ranch in Oregon. *Id.* at 65a. The court "decline[d] to characterize [petitioner's] radio and internet broadcasts as religious services," *ibid.*, noting that prior decisions had held that such one-way broadcasts "lack critical associational aspects characteristic of religious services," *id.* at 66a. The CFC further explained that petitioner had presented no evidence that its followers regarded listening to its radio or internet broadcasts as a "shared experience with other * * * followers" or "as a communal experience in any way." *Id.* at 67a.

Because some of the IRS's 14 criteria were satisfied while others were not, the CFC ultimately decided the

case by applying the "associational" test. Pet. App. 67a-73a. Under that test, "[t]o qualify as a church, 'an organization must serve an associational role in accomplishing its religious purpose.'" *Id.* at 67a (quoting *Church of Eternal Life and Liberty, Inc.* v. *Commissioner*, 86 T.C. 916, 924 (1986)). At a minimum, an organization must include "a body of believers or communicants that assembles regularly in order to worship." *Id.* at 39a (quoting *American Guidance*, 490 F. Supp. at 306).

Applying that test, the CFC held that petitioner "no longer exhibits the associational characteristics which were critical to convincing the Tax Court to grant church status" in *Foundation I*. Pet. App. 71a. Specifically, the court noted that petitioner "no longer provides religious services to an established congregation." *Id.* at 69a. The court also explained that "[t]he extent to which [petitioner] brings people together to worship is incidental to its main function which consists of a dissemination of its religious message through radio and internet broadcasts, coupled with written publications." *Id.* at 73a. The court concluded that what may have been a "close question" in *Foundation I* had become "more readily determinable," and it upheld the IRS's determination that petitioner did not qualify as a church for the years from 1998 to 2000. *Id.* at 71a-72a.

6. The United States Court of Appeals for the Federal Circuit affirmed. Pet. App. 74a-86a. The court of appeals noted that neither the statute nor the IRS regulations define the term "church" as used in Section 170. *Id.* at 79a. The court observed, however, that "some degree of consensus has emerged from court decisions." *Ibid.* First, courts generally recognize "that Congress intended a more restricted definition for a 'church' than for a 'religious organization.'" *Ibid.* (internal quotation

marks omitted). Second, courts have concluded that "the means by which an avowedly religious purpose is accomplished is what separates a 'church' from other forms of religious enterprise." *Id.* at 79a-80a (internal quotation marks and alterations omitted). Third, "courts have relied mainly on the IRS's 14 criteria and on the associational test when addressing the distinction between a religious organization and a church under section 170." *Id.* at 80a.

With respect to the IRS's 14 criteria, the court of appeals explained that, although it shared some of the concerns raised by the CFC, the decisions relying on those criteria have applied them "flexibly," rather than adopting them as a "definitive test." Pet. App. 80a. The court also observed that the associational test and the 14 criteria "substantially overlap" because courts have considered "regular congregations" and "regular religious services" to be among the most important of the 14 criteria. *Ibid.* The court of appeals then summed up the key inquiry, concluding that, "whether applying the associational test or the 14 criteria, courts have held that in order to be considered a church under section 170, a religious organization must create, as part of its religious activities, the opportunity for members to develop a fellowship by worshiping together." *Id.* at 81a-82a.

On appeal, petitioner argued that a religious organization should be treated as a church as long as "there is a body of followers beyond the scope of a family church who seek the teachings of the organization and express or acknowledge an affiliation with its religious tenets." Pet. App. 82a (internal quotation marks and alterations omitted). The court of appeals rejected that contention. The court explained that, because "every religious orga-

nization has members who express an affiliation with the organization's tenets," petitioner's approach was "at odds with the generally accepted principle that Congress intended a more restricted definition for a 'church' than for a religious organization." *Ibid.*

The court of appeals concluded that petitioner had failed to establish that it satisfied the associational test during the tax years at issue. Pet. App. 82a-86a. The court found that petitioner "did not hold regular services at any location, including its facility at the Tall Timber Ranch." *Id.* at 83a. The court recognized that petitioner had conducted 21 seminars in various locations throughout the United States, including five seminars at its ranch. The court explained, however, that "the attendance of groups of people at occasional seminars in cities scattered across the country does not constitute a regular assembly of a cohesive group of people for worship." *Ibid.* The court also observed that petitioner had not shown that five seminars at its ranch over a three-year period "enabled congregants to establish a community of worship." *Ibid.* Like the CFC, the court of appeals rejected petitioner's reliance on a number of letters from individuals stating that they had received petitioner's teachings and considered petitioner to be their church. *Id.* at 84a. That evidence, the court of appeals explained, was insufficient to satisfy the associational test because it did not "identify who attended in-person meetings as opposed to those who received [petitioner's] teachings through its electronic ministry." *Ibid.*

The court of appeals also rejected petitioner's contention that its "electronic ministry" allowed its members to assemble regularly as a "virtual congregation" by listening to sermons broadcast over the radio and the

internet at set times. Pet. App. 85a. In the court's view, merely disseminating religious information through print or broadcast media "does not fulfill the associational role required to qualify as a 'church' under section 170." *Ibid.* The court further explained that "[t]he fact that all listeners simultaneously received [petitioner's] message over the radio or the Internet does not mean that those members associated with each other or worshiped communally." *Ibid.* While recognizing that petitioner's listeners could call in and speak with its clergy during broadcasts, the court found that "a call-in show, like other forms of broadcast ministry, does not provide individual congregants with the opportunity to interact and associate with each other in worship." *Id.* at 86a.

Finally, the court of appeals made clear that "if an organization holds regular services with a regular congregation, it satisfies the associational test even if it also undertakes activities, such as broadcasting, that would not qualify under the associational test if considered alone." Pet. App. 86a. The court explained, however, that petitioner had failed to establish that it "held regular services with a regular congregation." *Ibid.* Accordingly, the court of appeals upheld the CFC's decision sustaining the IRS's determination. *Ibid.*

ARGUMENT

Petitioner contends (Pet. 21-28) that this Court should grant review to create an "appropriate" test to distinguish between churches and other religious organizations, and that (Pet. 28-34) the court of appeals misapplied the associational test by disregarding petitioner's radio and internet ministry. The court of appeals' decision is correct and does not conflict with any

decision of this Court or any other court of appeals. Further review is not warranted.

1. a. The court of appeals correctly held that a religious organization must serve an associational role in order to qualify as a "church" under 26 U.S.C. 170(b)(1)(A)(i). As the court explained, "neither the statute nor any IRS regulation defines" the term "church" as used in Section 170. Pet. App. 79a. Courts generally agree, however, and petitioner acknowledges (Pet. 21), that Congress did not intend the term "church" to encompass every religious organization that receives tax-exempt status under 26 U.S.C. 501(c)(3). See, *e.g.*, *Church of Visible Intelligence that Governs the Universe* v. *United States*, 4 Cl. Ct. 55, 64 (1983) ("It is generally accepted that Congress intended a more restricted definition for a 'church' than for a 'religious organization.'").

As several courts have recognized, what distinguishes a church from other religious organizations is "[t]he means by which an avowedly religious purpose is accomplished." Pet. App. 79a-80a (quoting *Spiritual Outreach Soc'y* v. *Commissioner*, 927 F.2d 335, 339 (8th Cir. 1991)); see *American Guidance Found., Inc.* v. *United States*, 490 F. Supp. 304, 306 (D.D.C. 1980); *First Church of In Theo* v. *Commissioner*, 56 T.C.M (CCH) 1045 (1989). Unlike, for example, a religious publishing service, a church accomplishes its religious purposes by regularly assembling a congregation for worship. See, *e.g.*, *American Guidance*, 490 F. Supp. at 306 ("At a minimum, a church includes a body of believers or communicants that assembles regularly in order to worship."); *Church of Eternal Life & Liberty, Inc.* v. *Commissioner*, 86 T.C. 916, 924 (1986) (*Church of Eternal Life*) ("[A] church's principal means of accomplishing its

religious purposes must be to assemble regularly a group of individuals related by common worship and faith."). Consistent with that established understanding, the court of appeals correctly held that, in order to qualify as a "church" under Section 170, a religious organization must create "the opportunity for members to develop a fellowship by worshiping together." Pet. App. 81a-82a.

That associational requirement makes particular sense in light of Congress's decision to exempt churches, but not all religious organizations, from certain reporting requirements. See 26 U.S.C. 6033. As Judge Simpson explained, dissenting in part in *Foundation of Human Understanding* v. *Commissioner*, 88 T.C. 1341, 1366 (1987), Congress's decision was likely based at least in part on "a belief that traditional churches do not require supervision by the Commissioner" because a church "involves regular and frequent meetings of members of the community" who "can assure that [the church's] activities are carried on for public purposes." *Id.* at 1368. The sort of internal supervision that Judge Simpson described occurs only in associational entities, not in religious organizations that merely broadcast their messages to individuals who have no regular contact with one another.

b. Petitioner does not contend that the court of appeals' decision conflicts with that of any other circuit. As the court of appeals recognized, courts have generally applied two analytical approaches—the IRS's 14 criteria and the "associational" test—to determine whether a religious organization qualifies as a "church" under Section 170. Pet. App. 80a. As petitioner acknowledges (Pet. 25), those two approaches "substantially overlap." Pet. App. 80a. Courts that have applied

the IRS's 14 criteria have emphasized that certain of those criteria, including regular congregations and regular religious services, are of "central importance." See, *e.g.*, *Spiritual Outreach Soc'y*, 927 F.2d at 339; *United States* v. *Jeffries*, 854 F.2d 254, 258 (7th Cir. 1988); *American Guidance*, 490 F. Supp. at 306. Similarly, courts that have applied the "associational" test have described the presence of a congregation that regularly assembles for worship as a threshold or minimum requirement for church status. See, *e.g.*, *Visible Intelligence*, 4 Cl. Ct. at 65; *American Guidance*, 490 F. Supp. at 306; *Foundation I*, 88 T.C. at 1357; *Church of Eternal Life*, 86 T.C. at 924. The court of appeals therefore was correct to observe that, "whether applying the associational test or the 14 criteria test, courts have held that in order to be considered a church under section 170, a religious organization must create * * * the opportunity for members to develop a fellowship by worshipping together." Pet. App. 81a-82a.

While courts have framed this inquiry in slightly different ways, each circuit to consider the issue has recognized that associational factors are central to the determination of church status. In *Lutheran Social Service* v. *United States*, 758 F.2d 1283 (1985), for example, the Eighth Circuit listed the IRS's 14 criteria and noted that certain factors, including regular congregations and regular religious services, were of "central importance." *Id.* at 1287 (internal quotation omitted). It also observed that "[a]t a minimum, a church includes a body of believers or communicants that assembles regularly for worship." *Ibid.* (internal quotation omitted). Applying that approach, the Eighth Circuit concluded that a social services organization, although affiliated with a church, did not itself qualify for church status because

there was no evidence that it held "regular worship services" as part of its activities. *Ibid.* Similarly in this case, the court of appeals held that petitioner did not qualify for church status because it did not hold regular services during the years at issue. Pet. App. 83a-85a.[3]

In *Spiritual Outreach Society*, the Eighth Circuit again listed the IRS's 14 criteria and described them as a "guide, helpful in deciding what constitutes a church." 927 F.2d at 339. It also explained that it placed "special emphasis" on particular criteria, including regular congregations and regular religious services. *Ibid.* Applying that approach, the Eighth Circuit determined that a religious organization that primarily held musical events did not qualify as a church. *Ibid.* Central to the court's conclusion was the fact that the organization had failed to show that the individuals attending its musical events constituted "an established congregation." *Ibid.* Similarly in this case, petitioner failed to show that a regular congregation attended its meetings or seminars during the years at issue. Pet. App. 83a-85a.

The Seventh Circuit is the only other court of appeals to have considered what constitutes a church for tax purposes. In *Jeffries*, that court treated the IRS's 14 criteria as a "guide" and emphasized that some factors were particularly "helpful." 854 F.2d at 258 & n.1.

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[3] The *Lutheran Social Service* court cited 26 C.F.R. 1.511-2(a)(3)(ii), which defines the term "church" in the context of imposing taxes on the unrelated business income of certain organizations. 758 F.2d at 1286. As the Eighth Circuit subsequently noted, however, that regulation is not relevant where, as here, unrelated business income is not at issue. *Spiritual Outreach Soc'y*, 227 F.3d at 338 & n.3. In response to objections from the public, a cross-reference to that regulation was removed from the proposed regulations implementing 26 U.S.C. 170. *Spiritual Outreach Soc'y*, 227 F.3d at 338 & n.3; *Foundation I*, 88 T.C. at 1356 n.5.

It then rejected the argument that a defendant in a tax-evasion case could qualify as a "one-person church and thereby be excused from paying his income taxes." *Id.* at 255. The court emphasized, *inter alia*, that the defendant had "no established congregation" and conducted "no regular religious services." *Id.* at 258. The Seventh Circuit's analysis is consistent with the holding below that a church must create "the opportunity for members to develop fellowship by worshiping together." Pet. App. 81a-82a.

Petitioner contends (Pet. 27) that a religious organization qualifies as a church as long as it "promulgates a religious ministry to a group of believers who * * * seek out the teachings of the organization and express or acknowledge a personal affiliation with its religious tenets." As the court of appeals correctly recognized, however, "every religious organization has members who express an affiliation with the organization's tenets." Pet. App. 82a. Petitioner's approach is therefore "at odds with the generally accepted principle that Congress intended a more restricted definition for a 'church' than for a religious organization." *Ibid.*; see also *Chapman* v. *Commissioner*, 48 T.C. 358, 363 (1967) ("[T]hough every church may be a religious organization, every religious organization is not per se a church.").

c. Petitioner also contends (Pet. 3) that the existing tests "pose constitutional concerns" by favoring some religions over others. But petitioner does not allege that any such concerns are implicated by this case. In fact, petitioner only "vague[ly] alleg[ed]" First Amendment concerns before the CFC, and that court accordingly determined that petitioner's "constitutional con-

cerns [were] not squarely before [it]." Pet. App. 28a-30a.

In any event, courts have carefully applied Section 170 to avoid raising First Amendment concerns. As the CFC noted, courts have "assiduously avoid[ed]" inquiring into the merits of an organization's religious beliefs in order to avoid "running afoul of First Amendment religious protections." Pet. App. 26a (quoting *Foundation I*, 88 T.C. at 1357). Moreover, as petitioner acknowledges (Pet. 23), both the CFC and the court of appeals recognized that a mechanical application of the IRS's 14 criteria might raise First Amendment concerns and declined to adopt those criteria as a test. Pet. App. 36a-38a, 81a. As petitioner acknowledges (Pet. 23), other courts that have relied on the IRS's 14 criteria have similarly treated them as a helpful guide, rather than as a determinative list of factors. See, *e.g.*, *Spiritual Outreach Soc'y*, 927 F.2d at 339 (treating the criteria "as a guide, helpful in deciding what constitutes a church" and noting that "[e]ach criterion need not be met for an organization to be a church").

Petitioner contends (Pet. 26, 33) that the associational test may disfavor certain religions, such as Buddhism and Taoism, that place less emphasis on communal worship. That concern is not presented in this case, however, because petitioner has admittedly "claimed throughout this litigation" (Pet. 26 n.4) that it practices communal worship. Petitioner cites no decision, moreover, that has denied church status to organizations that practice those Eastern religions.

2. Petitioner also contends (Pet. 28-34) that the court of appeals misapplied the associational test to the facts of this case. Petitioner argues (Pet. 31) that churches increasingly use technologies like the internet

to foster interaction among their members, and that the court of appeals erred by considering such technologies "wholly irrelevant to a church's associational role." Like the contention discussed above, that argument is based on the potential application of the associational test to hypothetical circumstances, and it does not warrant this Court's review.

In some future case, the "expanded use" of technologies such as "videoconferencing" (Pet. 33) may require courts to consider whether "virtual" congregations satisfy the associational test. This is not such a case, however, because petitioner offered no evidence that it used the internet to facilitate communication among its followers so as to create an online community of worship. Rather, during the tax years at issue, petitioner used the internet as a one-way broadcast medium, indistinguishable from traditional radio. Pet. App. 66a-67a. Petitioner's followers could listen to its broadcasts at set times and could call in to speak with petitioner's clergy. But, as the court of appeals explained, these broadcasts did not give petitioner's followers "the opportunity to interact and associate with each other in worship." *Id.* at 86a.

Given this lack of interaction, the court of appeals correctly concluded that the associational test was not satisfied. In reaching that conclusion, the court did not "ignore any interaction between followers other than interaction that occurs while they are physically present in the same room." Pet. 32-33. Rather, the court simply observed that petitioner had failed to demonstrate any regular interaction, whether virtual or otherwise, among its followers.

Finally, there is no merit to petitioner's contention (Pet. 32) that the court of appeals' approach "punishes

a church for its successful use of television, radio, and/or Internet." As the court of appeals explained, an organization satisfies the associational test if it "holds regular services with a regular congregation," even "if it also undertakes other activities, such as broadcasting, that would not qualify under the associational test if considered alone." Pet. App. 86a. Petitioner simply failed to satisfy the threshold requirement of holding regular services with a regular congregation; it was not penalized for also engaging in a broadcast ministry.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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